IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.945 OF 2005
WITH
CIVIL APPLICATION NO.1109 OF 2005

Bansilal Niranjan Kanojia. ...Appellant.
Vs.
Municipal Corporation for Greater Mumbai & Anr. ...Respondents.
....
Mr. A.Y. Sakhare, Sr.Advocate with Mr. A.J. Rizvi for the Appellant.
Mrs.Geeta Jogalekar for Respondent No.1.
Respondent No.2 present in person.
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CORAM : DR. D.Y. CHANDRACHUD, J.

December 5, 2005.

P.C.:

The Learned Trial Judge has dismissed the Notice of Motion taken out by the Appellant in a suit instituted to challenge the action of the Municipal Corporation in pursuance of a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888.

The notice dated 5th June 1989 was sought to be challenged in a suit instituted before the City Civil Court (L.C. Suit No.4116 of 1996). In that suit a Notice of Motion was taken out

which came to be dismissed on 26th June 1997 by the Trial Court. The appeal preferred by the Appellant herein was dismissed and a Learned Single Judge of this Court who heard the appeal noted that after the appeal was argued for some time, Counsel stated that the Appellant would move the Municipal Corporation for regularisation for structure. Since the Corporation had not disposed of the application for regularisation, this Court in an order dated 21st June 2005 directed the Deputy Municipal Commissioner to do so. The Deputy Municipal Commissioner has passed a reasoned order dated 6th July 2005 and noted that the suit structure is in the compulsory open space of Krishna Kunj Building. None of the documents produced by the Appellant showed the existence of the structure prior to the datum line of 1st April 1960.

The photographs which are produced on the record at page 515 clearly show that the structure in question is in the compulsory open space. Counsel appearing on behalf of the Municipal Corporation states that the Municipal Corporation is duly pursuing the action in respect of other adjoining structures which have been constructed unauthorisedly. The main challenge to the notice under Section 351 was disposed of by the earlier order of

this Court dated 4th August 1997. The Appellant agreed to pursue the request for regularisation. The Municipal Corporation has declined to regularise the structure for cogent reasons. This Court would not be justified in interfering with the considered decision of the competent municipal authority particularly when it has been found that the structure is in a compulsory open space. There is no merit in the appeal. The appeal is dismissed.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

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